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AN ACT

RELATING TO PUBLIC UTILITIES; ENACTING THE EFFICIENT USE OF ENERGY ACT; PROVIDING FOR EXPENDITURES FOR ENERGY EFFICIENCY AND LOAD MANAGEMENT BY PUBLIC UTILITIES; AMENDING THE PUBLIC UTILITY ACT; DECLARING AN EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--Sections 1 through 11 of this act may be cited as the "Efficient Use of Energy Act".

Section 2. FINDINGS.--The legislature finds that:

A. energy efficiency and load management are cost-effective resources that are an essential component of the balanced resource portfolio that public utilities must achieve to provide affordable and reliable energy to public utility consumers;

B. energy efficiency and load management in New Mexico are resources that are currently underutilized;

C. public and municipal utility investment in energy efficiency and load management presents opportunities to increase New Mexico's energy security, protect New Mexico energy consumers from price increases, preserve the state's natural resources and pursue an improved environment in New Mexico;

D. investment in energy efficiency and load management by public utilities subject to public regulation

1 commission oversight in accordance with the Efficient Use of
2 Energy Act can bring significant economic benefits to New
3 Mexico;

4 E. it serves the public interest to support public
5 utility investments in cost-effective energy efficiency and
6 load management by removing any regulatory disincentives that
7 may exist and allowing recovery of costs for reasonable and
8 prudently incurred expenses of energy efficiency and load
9 management programs;

10 F. investments in energy efficiency and
11 implementation of utility energy efficiency programs for
12 economically disadvantaged New Mexicans, in conjunction with
13 low-income weatherization programs managed by the state of
14 New Mexico, will reduce the burden of utility costs on
15 low-income customers;

16 G. public utility investments in cost-effective
17 energy efficiency and load management can provide significant
18 reductions in greenhouse gas emissions, regulated air
19 emissions, water consumption and natural resource depletion,
20 and can avoid or delay the need for more expensive
21 generation, transmission and distribution infrastructure;

22 H. New Mexico should participate in regional
23 efforts to reduce energy consumption by twenty percent by
24 2020 through programs to reduce energy consumption;

25 I. public utility resource planning to meet

1 New Mexico's energy service needs should be identified and
2 evaluated on an ongoing basis in accordance with the
3 principles of integrated resource planning; and

4 J. it is necessary and appropriate to allow
5 distribution cooperative utilities to participate in the
6 implementation of energy efficiency programs in ways that
7 differ from rules applicable to public utilities that are not
8 customer owned.

9 Section 3. POLICY.--It is the policy of the Efficient
10 Use of Energy Act that public utilities, distribution
11 cooperative utilities and municipal utilities include
12 cost-effective energy efficiency and load management
13 investments in their energy resource portfolios and that any
14 regulatory disincentives that may exist to public utility
15 investments in cost-effective energy efficiency and load
16 management are eliminated.

17 Section 4. DEFINITIONS.--As used in the Efficient Use
18 of Energy Act:

19 A. "commission" means the public regulation
20 commission;

21 B. "cost-effective" means that the program being
22 evaluated satisfies the total resource cost test;

23 C. "distribution cooperative utility" means a
24 utility with distribution facilities organized as a rural
25 electric cooperative pursuant to Laws 1937, Chapter 100 or

1 the Rural Electric Cooperative Act or similarly organized in
2 other states;

3 D. "energy efficiency" means measures, including
4 energy conservation measures, or programs that target
5 consumer behavior, equipment or devices to result in a
6 decrease in consumption of electricity and natural gas
7 without reducing the amount or quality of energy services;

8 E. "large customer" means a utility customer at a
9 single, contiguous field, location or facility, regardless of
10 the number of meters at that field, location or facility,
11 with electricity consumption greater than seven thousand
12 megawatt-hours per year or natural gas use greater than three
13 hundred sixty thousand decatherms per year;

14 F. "load management" means measures or programs
15 that target equipment or devices to result in decrease peak
16 electricity demand or shift demand from peak to off-peak
17 periods;

18 G. "public utility" means a public utility that is
19 not also a distribution cooperative utility; and

20 H. "total resource cost test" means a standard
21 that is met if, for an investment in energy efficiency or
22 load management, on a life-cycle basis the avoided
23 supply-side monetary costs are greater than the monetary
24 costs of the demand-side programs borne by both the utility
25 and the participants.

1 Section 5. COMMISSION--ENERGY EFFICIENCY AND LOAD
2 MANAGEMENT PROGRAMS.--

3 A. Pursuant to the findings and purpose of the
4 Efficient Use of Energy Act, the commission shall consider
5 public utility investments in cost-effective energy
6 efficiency and load management to be an acceptable use of
7 ratepayer money.

8 B. The commission shall direct public utilities to
9 evaluate and implement cost-effective programs that reduce
10 energy demand and consumption.

11 C. Before the commission approves an energy
12 efficiency and load management program for a public utility,
13 it must find that the portfolio of programs is cost-effective
14 and designed to provide every affected customer class with
15 the opportunity to participate and benefit economically. The
16 commission shall determine the cost-effectiveness of energy
17 efficiency and load management measures using the total
18 resource cost test.

19 D. The commission shall act expeditiously on
20 public utility requests for approval of energy efficiency or
21 load management programs.

22 E. Public utilities shall obtain commission
23 approval of energy efficiency and load management programs
24 before they are implemented. Public utilities proposing new
25 energy efficiency and load management programs shall, before

1 seeking commission approval, solicit non-binding
2 recommendations on the design and implementation of the
3 programs from commission staff, the attorney general, the
4 energy, minerals and natural resources department and other
5 interested parties.

6 F. The commission shall identify any disincentives
7 or barriers that may exist for public utility expenditures on
8 energy efficiency and load management and, if found, ensure
9 that they are eliminated in order that public utilities are
10 financially neutral in their preference for acquiring demand
11 or supply-side utility resources.

12 Section 6. COST RECOVERY.--

13 A. A public utility that undertakes cost-effective
14 energy efficiency and load management programs shall recover
15 the costs of all the programs implemented after the effective
16 date of the Efficient Use of Energy Act through an approved
17 tariff rider. Program costs may be deferred for future
18 recovery through creation of a regulatory asset, provided
19 that the deferred recovery does not cause the tariff rider to
20 exceed the limits imposed by this section. The tariff rider
21 for any utility customer shall not exceed the lower of one
22 and one-half percent of that customer's bill or seventy-five
23 thousand dollars (\$75,000) per year except that, upon
24 application by a public utility with the advice and consent
25 of the entity designated by law to represent residential and

1 commercial utility customers, the commission may approve a
2 tariff rider in excess of one and one-half percent for
3 customers other than large customers and may approve a tariff
4 rider in excess of the lower of one and one-half percent or
5 seventy-five thousand dollars (\$75,000) per year for a large
6 customer that consents to such a rider. The commission shall
7 approve such applications upon finding that the proposed
8 energy efficiency and load management programs are
9 cost-effective and that the cost recovery proposal is just
10 and reasonable.

11 B. The tariff rider shall provide for the
12 recovery, on a monthly basis or otherwise, of all reasonable
13 costs of approved energy efficiency and load management
14 programs.

15 C. A tariff rider proposed by a public utility to
16 fund approved energy efficiency and load management programs
17 shall go into effect thirty days after filing, unless
18 suspended by the commission for a period not to exceed one
19 hundred eighty days. If the tariff rider is not approved or
20 suspended within thirty days after filing, it shall be deemed
21 approved as a matter of law. If the commission has not acted
22 to approve or disapprove the tariff rider by the end of an
23 ordered suspension period, it shall be deemed approved as a
24 matter of law. The commission shall approve utility
25 reconciliations of the tariff rider annually based upon

1 recovery of the reasonable costs of the utility's programs.

2 D. The commission shall ensure that there are no
3 cross-subsidies between a public utility's energy efficiency
4 and load management activities and the public utility's
5 supply-side activities and shall ensure that the existence of
6 a tariff rider does not permit a public utility to earn an
7 excessive rate of return.

8 Section 7. ALTERNATIVE ENERGY EFFICIENCY PROVIDER.--

9 With a public utility's consent, the commission may allow for
10 an alternative entity to provide ratepayer-funded energy
11 efficiency and load management to customers of that public
12 utility.

13 Section 8. MEASUREMENT AND VERIFICATION.--The public

14 utility shall submit to the commission an annual report,
15 prepared by an independent program evaluator, that provides
16 information relating to the actions taken by the public
17 utility to comply with the standards of the Efficient Use of
18 Energy Act. The reports shall include documentation of
19 program expenditures, measurement and verification of savings
20 resulting from programs, evaluation of the cost-effectiveness
21 of expenditures, evaluation of the cost-effectiveness of
22 self-direct programs and any other information the commission
23 may require pursuant to its rulemaking authority. The
24 commission may direct a utility to modify or terminate a
25 particular energy efficiency or load management program if,

1 after an adequate period for implementation of the program,
2 the commission determines the program is not sufficiently
3 meeting its goals and purposes. Termination of a program or
4 programs shall be accomplished in a manner that allows the
5 utility to fully recover its reasonable and prudent program
6 costs.

7 Section 9. SELF-DIRECTED PROGRAMS FOR CUSTOMERS--
8 EXEMPTIONS.--

9 A. A large customer shall receive approval for a
10 credit for and equal to the expenditures that customer has
11 made at its facilities on and after January 1, 2005 toward
12 cost-effective energy efficiency and load management. To
13 receive approval, the large customer must demonstrate to the
14 reasonable satisfaction of the utility or self-direct program
15 administrator that its expenditures are cost-effective. Once
16 approved, the credit may be used to offset up to seventy
17 percent of the tariff rider authorized by the Efficient Use
18 of Energy Act until the credit is exhausted. Eligible
19 expenditures shall have a simple payback period of more than
20 one year but less than seven years. Projects that have
21 received rebates, financial support or other substantial
22 program support from a utility are not eligible for a credit.

23 B. A large customer shall receive approval for an
24 exemption to paying seventy percent of the tariff rider if
25 the customer demonstrates to the reasonable satisfaction of

1 the utility or self-direct program administrator that it has
2 exhausted all cost-effective energy efficiency measures at
3 its facility. As used in this section, "cost-effective"
4 means all measures with a simple payback period of more than
5 one year but less than seven years.

6 C. Large customers shall seek and receive approval
7 for credits and exemptions under this provision from the
8 utility or a commission-approved self-direct program
9 administrator. Approvals or disapprovals by the utility or
10 administrator shall be subject to commission review. Any
11 credit not fully utilized in the year it is received shall
12 carry over to subsequent years. Implementation of credits
13 shall be designed to minimize utility administrative costs.

14 D. Except as otherwise provided in this section,
15 projects, expenditures and exemptions under this section
16 shall be evaluated by an independent program evaluator using
17 the same measurement and verification standards applying to
18 utility programs, subject to appropriate protections for
19 confidentiality, by the utility or a commission-approved
20 self-direct program administrator and reported in the annual
21 report to the commission pursuant to the Efficient Use of
22 Energy Act.

23 Section 10. INTEGRATED RESOURCE PLANNING.--Pursuant to
24 the commission's rulemaking authority, public utilities
25 supplying electric or natural gas service to customers shall

1 periodically file an integrated resource plan with the
2 commission. Utility integrated resource plans shall evaluate
3 renewable energy, energy efficiency, load management,
4 distributed generation and conventional supply-side resources
5 on a consistent and comparable basis and take into
6 consideration risk and uncertainty of fuel supply, price
7 volatility and costs of anticipated environmental regulations
8 in order to identify the most cost-effective portfolio of
9 resources to supply the energy needs of customers. The
10 preparation of resource plans shall incorporate a public
11 advisory process. Nothing in this section shall prohibit
12 public utilities from implementing cost-effective energy
13 efficiency and load management programs and the commission
14 from approving public utility expenditures on energy
15 efficiency programs and load management programs prior to the
16 commission establishing rules and guidelines for integrated
17 resource planning. The commission may exempt public
18 utilities with fewer than five thousand customers and
19 distribution-only public utilities from the requirements of
20 this section. The commission shall take into account a
21 public utility's resource planning requirements in other
22 states and shall authorize utilities that operate in multiple
23 states to implement plans that coordinate the applicable
24 state resource planning requirements. The requirements of
25 this section shall take effect one year following the

1 commission's adoption of rules implementing the provisions of
2 this section.

3 Section 11. DISTRIBUTION COOPERATIVE UTILITIES.--

4 A. Distribution cooperative utilities shall
5 periodically examine the potential to assist their customers
6 in reducing energy consumption or peak electricity demand in
7 a cost-effective manner. Based on these studies,
8 distribution cooperative utilities shall implement
9 cost-effective energy efficiency and load management programs
10 that are economically feasible and practical for their
11 members and customers. Approval for such programs shall
12 reside with the governing body of each distribution
13 cooperative utility and not with the commission.

14 B. Each distribution cooperative utility shall
15 file with the commission concurrently with its annual report,
16 a report that describes all of the distribution cooperative
17 utility's programs or measures that promote energy
18 efficiency, conservation or load management. The report
19 shall set forth the costs of each of the programs or measures
20 for the previous calendar year and the resulting effect on
21 the consumption of electricity. In offering or implementing
22 energy efficiency, conservation or load management programs,
23 a distribution cooperative utility shall attempt to minimize
24 any cross-subsidies between customer classes.

25 C. Each distribution cooperative utility shall

1 include in the report required by Subsection B of this
2 section a description of all programs or measures to promote
3 energy efficiency, conservation or load management that are
4 planned and the anticipated date for implementation.

5 D. Costs resulting from programs or measures to
6 promote energy efficiency, conservation or load management
7 may be recovered by the distribution cooperative utility
8 through its general rates. In requesting approval to recover
9 such costs in general rates, the distribution cooperative
10 utility may elect to use the procedure set forth in
11 Subsection G of Section 62-8-7 NMSA 1978.

12 Section 12. Section 62-3-3 NMSA 1978 (being Laws 1967,
13 Chapter 96, Section 3, as amended) is amended to read:

14 "62-3-3. DEFINITIONS.--Unless otherwise specified, when
15 used in the Public Utility Act:

16 A. "affiliated interest" means a person who
17 directly or indirectly, through one or more intermediaries,
18 controls or is controlled by or is under common control with
19 a public utility. Control includes instances where a person
20 is an officer, director, partner, trustee or person of
21 similar status or function or owns directly or indirectly or
22 has a beneficial interest in ten percent or more of any class
23 of securities of a person;

24 B. "commission" means the public regulation
25 commission;

1 C. "commissioner" means a member of the
2 commission;

3 D. "municipality" means a municipal corporation
4 organized under the laws of the state, and H-class counties;

5 E. "person" means an individual, firm,
6 partnership, company, rural electric cooperative organized
7 under Laws 1937, Chapter 100 or the Rural Electric
8 Cooperative Act, corporation or lessee, trustee or receiver
9 appointed by any court. "Person" does not mean a class A
10 county as described in Section 4-36-10 NMSA 1978 or a class B
11 county as described in Section 4-36-8 NMSA 1978. "Person"
12 does not mean a municipality as defined in this section
13 unless the municipality has elected to come within the terms
14 of the Public Utility Act as provided in Section 62-6-5 NMSA
15 1978. In the absence of voluntary election by a municipality
16 to come within the provisions of the Public Utility Act, the
17 municipality shall be expressly excluded from the operation
18 of that act and from the operation of all its provisions, and
19 no such municipality shall for any purpose be considered a
20 public utility;

21 F. "securities" means stock, stock certificates,
22 bonds, notes, debentures, mortgages or deeds of trust or
23 other evidences of indebtedness issued, executed or assumed
24 by a utility;

25 G. "public utility" or "utility" means every

1 person not engaged solely in interstate business and, except
2 as stated in Sections 62-3-4 and 62-3-4.1 NMSA 1978, that may
3 own, operate, lease or control:

4 (1) any plant, property or facility for the
5 generation, transmission or distribution, sale or furnishing
6 to or for the public of electricity for light, heat or power
7 or other uses;

8 (2) any plant, property or facility for the
9 manufacture, storage, distribution, sale or furnishing to or
10 for the public of natural or manufactured gas or mixed or
11 liquefied petroleum gas for light, heat or power or other
12 uses; but the term "public utility" or "utility" shall not
13 include any plant, property or facility used for or in
14 connection with the business of the manufacture, storage,
15 distribution, sale or furnishing of liquefied petroleum gas
16 in enclosed containers or tank truck for use by others than
17 consumers who receive their supply through any pipeline
18 system operating under municipal authority or franchise and
19 distributing to the public;

20 (3) any plant, property or facility for the
21 supplying, storage, distribution or furnishing to or for the
22 public of water for manufacturing, municipal, domestic or
23 other uses; provided, however, nothing contained in this
24 paragraph shall be construed to apply to irrigation systems,
25 the chief or principal business of which is to supply water

1 for the purpose of irrigation;

2 (4) any plant, property or facility for the
3 production, transmission, conveyance, delivery or furnishing
4 to or for the public of steam for heat or power or other
5 uses;

6 (5) any plant, property or facility for the
7 supplying and furnishing to or for the public of sanitary
8 sewers for transmission and disposal of sewage produced by
9 manufacturing, municipal, domestic or other uses; provided
10 that the terms "public utility" or "utility" as used in the
11 Public Utility Act do not include any utility owned or
12 operated by a class A county as described in Section 4-36-10
13 NMSA 1978 either directly or through a corporation owned by
14 or under contract with such a county; or

15 (6) any plant, property or facility for the
16 sale or furnishing to or for the public of goods or services
17 to reduce the consumption of or demand for electricity or
18 natural gas, and is either a public utility under the
19 definitions found in Paragraphs (1) or (2) of this
20 subsection, or is an alternative energy efficiency provider
21 as described in Section 7 of the Efficient Use of Energy Act;

22 H. "rate" means every rate, tariff, charge or
23 other compensation for utility service rendered or to be
24 rendered by a utility and every rule, regulation, practice,
25 act, requirement or privilege in any way relating to such

1 rate, tariff, charge or other compensation and any schedule
2 or tariff or part of a schedule or tariff thereof;

3 I. "renewable energy" means electrical energy
4 generated by means of a low- or zero-emission generation
5 technology that has substantial long-term production
6 potential and may include, without limitation, solar, wind,
7 hydropower, geothermal, landfill gas, anaerobically digested
8 waste biomass or fuel cells that are not fossil fueled.

9 "Renewable energy" does not include fossil fuel or nuclear
10 energy;

11 J. "service" or "service regulation" means every
12 rule, regulation, practice, act or requirement relating to
13 the service or facility of a utility;

14 K. "Class I transaction" means the sale, lease or
15 provision of real property, water rights or other goods or
16 services by an affiliated interest to a public utility with
17 which it is affiliated or by a public utility to its
18 affiliated interest;

19 L. "Class II transaction" means:

20 (1) the formation after May 19, 1982 of a
21 corporate subsidiary by a public utility or a public utility
22 holding company by a public utility or its affiliated
23 interest;

24 (2) the direct acquisition of the voting
25 securities or other direct ownership interests of a person by

1 a public utility if such acquisition would make the utility
2 the owner of ten percent or more of the voting securities or
3 other direct ownership interests of that person;

4 (3) the agreement by a public utility to
5 purchase securities or other ownership interest of a person
6 other than a nonprofit corporation, contribute additional
7 equity to, acquire additional equity interest in or pay or
8 guarantee any bonds, notes, debentures, deeds of trust or
9 other evidence of indebtedness of any such person; provided,
10 however, that a public utility may honor all agreements
11 entered into by such utility prior to May 19, 1982; or

12 (4) the divestiture by a public utility of
13 any affiliated interest that is a corporate subsidiary of the
14 public utility;

15 M. "corporate subsidiary" means any person ten
16 percent or more of whose voting securities or other ownership
17 interests are directly owned by a public utility; and

18 N. "public utility holding company" means an
19 affiliated interest that controls a public utility through
20 the direct or indirect ownership of voting securities of that
21 public utility."

22 Section 13. EMERGENCY.--It is necessary for the public
23 peace, health and safety that this act take effect
24 immediately. _____
25